

RECEIVED
IN THE UNITED STATE DISTRICT COURT
2005 NOV 17TH 9:20 AM DOLE DISTRICT OF ALABAMA

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CHARLES SMITH, SR.

AIS # 129560

Petitioner,

CIVIL Action No
2:05-CU-935T

US,

WARDEN JAMES DELOACH
and the Alabama Attorney
General,

Respondents

PETITIONER RESPONDS TO RESPONDENT
ANSWER

COMES NOW, the Petitioner respond
to Court Order to respond to Respondent
Answer on Oct 25, 2005 by the order of
This Honorable Court on 27 Oct 2005.

on why his Section 2254 petition should

not be barred by failing to file

within the one-year limitation period

established by 28 U.S.C § 2244 (d)(1).

(1) The Petitioner avers that he can show cause and prejudices and fundamental miscarriage of Justice to excuse his procedural defaults.

Murphy Carrier (1986) 477 U.S. 478 (1986) Schlup v Delo, 513 U.S. 298 (1995)

(a) The Petitioner will show Exhibits 1 Page 8 the Alabama Supreme Court committed error in dismissing the Petitioner Writ of Certiorari on 11 April 2005 for being untimely filed by (Exhibit m 1). The Petitioner Writ of Certiorari was filed on April 7, 2005 on time due to fact The Petitioner filed a Motion for Extension which was Granted (Exhibit 1 Page 8 as part of

(2)

Responds Brief states that the Petitioner writ of certiorari was file on time. was due April 8, 2005.

2) In Exhibit 2 Page 9 of the Petitioner Responds Brief show the Petitioner filed a Motion of Reconsideration on 7 April 2005 from the dismissal of Petitioner writ of certiorari was denied.

3) The Petitioner avers by the Respondent answer show that the Appellant Counsel Vicker was paid by the state to represent the Petitioner on Direct Appeal. Exhibit F Page 56 - 59

a) Shows Appellant Counsel Vicker fail to file for Writ of Certiorari

b) The Petitioner never had a Transcript during the 217 days the Attorney General want to

count toward the Petitioner Statute
of Limitation to file a 2254

c) That the BAR Association fail
to discipline an Attorney who
violate the Rules of Professional
Conduct

(1) Rule 1.1.

(a) A Lawyer shall provide competent
Representation to a client.
Competent requires the Legal
Knowledge, skill, thoroughness
and preparation reasonably
necessary for representation.

(2) Rule 1.3

(b) A Lawyer shall not willfully
neglect a legal matter
entrusted to him

4) The Petitioner avers that the facts
will prove Attorney Uicker was
in violation of the Petitioner

(4)

Sixth Amendment Right guaranteed by United States and Alabama Constitution.

A) (Exhibit F, C, 56-58) shows Attorney Uicker fail to protect the Petitioner Legal issue and fail to follow the Rule of Professional Conduct set forth by BAR Association.

B) Under Strickland v. Washington there is two prong test set forth by thesees principle.

1) The Petitioner must show the Attorney was ineffective

2) The Petitioner must show how the Attorney ineffectiveness effected the outcome of his case.

(a) The Petitioner has clearly proven Appellant Counsel Uicker was ineffective she

neglected all legal remedy, and have
the Petitioner in a position where
the Attorney General went to
procedurally disbar the Petition
by the ineffectiveness of Attorney
Vickerson counting 217 days on
his statue of limitation at
no fault of Petitioner at all.

Conclusion

The Petitioner have proven a miscarriage
of Justice, cause, and prejudices to
excuse his procedural defaults on
Trial Appellant Counsel and the Alabamas
Supreme court for dismissing the Petitioner
Writ of Certiorari at no fault of Petitioner
The Petitioner pray this Honorable Court
will grant this 2254 on the ground
stated above.

Respectfully Submitted,
Charles Smith
Hamilton AL
223 Sasser Drive
Hamilton, AL 35570

CERTIFICATE OF SERVICES

I hereby certify that on this, 10th day of Nov, 2005 I did serve a copy of the foregoing on the following, by placing the same in the United States Mail, first class postage prepaid and addressed as follows:

THE Honorable J. Thomas Leverette
Office of the Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

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Charles Smith #129560
Hamilton ADT
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